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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

BELINDA RUE MIRAGLIA, R.C.P.
7146 Forum Street
San Diego, CA 92111

Respiratory Care Practitioner License No. 15278

Respondent.

Case No. 1H-2007-055

OAH No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about June 16, 1992, the Respiratory Care Board issued Respiratory Care Practitioner License Number 15278 to BELINDA RUE MIRAGLIA, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 118, subdivision (b), of the Code states:

“The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.”

5. Section 3710 of the Code states in pertinent part:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

7. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“ ...

“(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to

1 violate any provision or term of this chapter or of any provision of Division 2
2 (commencing with Section 500).

3 “...”

4 8. Section 3752 of the Code states in pertinent part:

5 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
6 made to a charge of any offense which substantially relates to the qualifications, functions, or
7 duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this
8 article.

9 9. California Code of Regulations (CCR), title 16, section 1399.370, states,
10 in pertinent part:

11 “For the purposes of denial, suspension, or revocation of a license, a crime or act
12 shall be considered to be substantially related to the qualifications, functions or duties of a
13 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
14 the functions authorized by his or her license or in a manner inconsistent with the public health,
15 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
16 following:

17 “(a) Violating or attempting to violate, directly or indirectly, or assisting
18 or abetting the violation of or conspiring to violate any provision or term of the
19 Act.

20 “...”

21 “(c) Conviction of a crime involving driving under the influence or reckless
22 driving while under the influence.

23 “...”

24 **COST RECOVERY**

25 10. Section 3753.5, subdivision (a) of the Code states:

26 “In any order issued in resolution of a disciplinary proceeding before the board,
27 the board or the administrative law judge may direct any practitioner or applicant found to have
28 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the

1 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
2 estimate of costs where actual costs are not available, signed by the official custodian of the
3 record or his or her designated representative shall be prima facie evidence of the actual costs of
4 the investigation and prosecution of the case.”

5 11. Section 3753.7 of the Code provides that for purposes of the Respiratory
6 Care Practice Act, costs of prosecution shall include attorney general or other prosecuting
7 attorney fees, expert witness fees, and other administrative, filing, and service fees.

8 12. Section 3753.1 of the Code states:

9 "(a) An administrative disciplinary decision imposing terms of probation may
10 include, among other things, a requirement that the licensee-probationer pay the monetary
11 costs associated with monitoring the probation.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Conviction of a Crime)**

14 13. Respondent is subject to discipline under section 3750, as defined by
15 sections 3750, subdivisions (d) and (g) and 3752, of the Code, and California Code of Regulation
16 (CCR), title 16, section 1399.370, subdivisions (a) and (c), in that Respondent was convicted of a
17 crime that substantially relates to the qualifications, functions, or duties of a respiratory care
18 practitioner, and of driving under the influence or reckless driving while under the influence.
19 The circumstances are as follows:

20 A. On or about June 7, 2007, in the case entitled *People Of The State of*
21 *California v. Belinda Rue Miraglia*, Riverside Superior Court Case No. SWF020119,
22 Respondent was convicted on her own guilty plea of violating Vehicle Code section
23 23153(b) [driving under the influence with a blood alcohol content of 0.08% or more]
24 and placed on summary probation for thirty-six (36) months and in the custody of the
25 Riverside County Sheriff for sixty (60) days.

26 B. The circumstances of the arrest are as follows: On or about January 15,
27 2007, at approximately 9:42 a.m., Respondent was traveling eastbound on SR-74 (Florida
28 Avenue) in Riverside County. She had just gotten off a 12-hour work shift at S.

1 Memorial Hospital in San Diego County and was on her way home.

2 C. Respondent entered and stopped the left-turn lane at the intersection of
3 Florida Avenue and California Avenue, waiting to make a left turn onto northbound
4 California Avenue. Respondent suddenly made a left turn in front of a Honda Accord
5 traveling westbound on Florida Avenue resulting in a collision and physical injuries. The
6 force of the collision caused Respondent's motor vehicle to strike a third motor vehicle
7 that was stopped in the #1 lane of southbound California Avenue. The driver of the
8 Honda Accord was transported to the Emergency Room at H. V. Hospital for her injuries.

9 D. Officer R.G. of the California Highway Patrol, upon arriving at the scene
10 of the accident, noticed that Respondent suffered a small laceration on her forehead as a
11 result of the collision, and that Respondent's eyes were red and watery. He also detected
12 a strong odor of an alcoholic beverage on Respondent's breath. Respondent admitted to
13 consuming four "pocket bottles" of Sutter Home wine after work between 7:30 a.m. and
14 8:30 a.m. Respondent failed to perform or complete the Field Sobriety Test as explained
15 and demonstrated.

16 E. Respondent was placed under arrest for violation of California Vehicle
17 Code section 23153, subdivisions (a) [Driving under the influence of an alcoholic
18 beverage and causing injury to another] and (b) [Driving while having 0.08 percent or
19 more blood alcohol content and causing injury to another]. Respondent was transported
20 to H.V. Hospital for a blood screen test and an "O.K. to Book" medical clearance. The
21 blood screen results determined Respondent's blood alcohol content to be 0.14%.
22 Respondent was transported to the Larry D. Smith Correctional Facility where she was
23 booked for Vehicle Code section 23153, subdivisions (a) and (b) violations.

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